G. R. S. 59]

# GENERAL AND REVENUE SECRETARIAT.

1906-07
( Courts )

**File No.** 114-05

**Serial Nos.** 6-10

## Papers Filed.

***Month*** March 1907

SUBJECT.

Recovery of fds concerned in Criminal
No 286 of 1904-05 on the file of the
Asstt Commr & 1st class magistrate
Kolar fds

| PREVIOUS REFERENCES. | LATER REFERENCES. |
| --- | --- |
| Same file 1-4 | |

G. R. S. 11] 1906.

GENERAL AND REVENUE SECRETARIAT.

(Courts.)

NOTES.

File No. 114

FILE HEADING.

Recovery of gold concerned in criminal case No. 286 for-05 on the file of the Asst. Commr. Magistrate of the Kolar Gold Fields

From

The District Magistrate, Kolar Dt.

No. C. 446. Dated 1-3-06 Received 2.3.06

| Diary No. 2288. | Enclos. 1 | Spare Copies. | Serial No. 6. |
|---|---|---|---|

BRIEF ABSTRACT OF LETTER.

Forwards the reply of the Superintendent of the Sank Blocklime, regarding the refund to Govt of Rs 60, being the value of the confiscated Gold in the above case, stating that in the opinion of the Board's legal advisers no action by Govt to recover the gold or its value can be against the Sank Rock Co

NOTES AND ORDERS.

Submitted for orders with references. The previous history of the case is contained in the office note already fwd up.

6/3/06.

7/3/06 2 The Govt. Advocate may affirm be consulted unofficially & in the first instance, with reference to the observa

Notes—First sheet.

MGCPB—30,000—17-2-05.

G.R.S. 12]
General and Revenue Secretariat.

File No. 114 of 1905

Serial No.

1905/6 From H.O. Reg'dw 11
No 2m. Offl. of 1901 9-3-06
Rec'd 9-3-06

1905/6 To H.O Reg'dw 11

... 06
111
9/3/06

of the Land Block Company's legal advisers. Secy 9/3/06

3 Forwarded to the Govt Advocate for favor of opinion 9/3/1906

4 Secy

In my letter to Govt. No 78 dated 3.10.05, I stated that when a magte ordered the delivery of property produced before him to any party and the same was so delivered before the said order was set aside by a Court of appeal or revision, there was no provision in the Cr. Pro: Code to adopt any coercive measures to get back the property. This opinion was based on the law as it stood before Sec: 520 C.P.C was amended and under the mistaken belief that the said amendment was not included in the Mysore Code.

As matters now stand it seems to me two courses open for the recovery of the gold or its value Rs 60/-. One is to move the

NOTE—Contn. sheet

GPB—50,000—23-10-05

G.R.S. 12]
General and Revenue Secretariat.

File No. 114 of 1905

Serial No.

Chief Court to pass a further order under Sec: 540 Cr. P. C. calling upon the Bank Block Company to return the goods or its value, - and the other to institute a suit. I am not quite sure that such a suit would not lie as the Company's solicitors office. For, in that case, the return of the property or payment of its value cannot be enforced at all if the person so directed possesses immovable property only. (Vide Sections 547 and 386 C.P.C). The former course of moving the Chief Court may in the first instance be adopted, as it is the easier course.

S. Narayanarao
14. 3. 06.

5

Subd to advg
SW 16/3/06

The Govt. Advocate may (in acc: with the opinion advised above) be asked to move the Chief Court to pass a further order under S. 540 Cr. P. C.

Draft order accds —

Submitted

SW 20/3/06 SW 21/3/06

Draft submitted to the Dewan Sahib thro the 1st Councillor

21/3/06

Dewan 16.3.06

SW 29/3/06

1624
24-3-06.

12102
22.3.06

22-3-1906

22-3-06. 21/3/1906

G.R.S. 12]
General and Revenue Secretariat.

Rev. File No. 1141 — of 1905-06.

| | Serial No. | |
|---|---|---|
| | 7 | To The Government Advocate No 2625-26 of 28.3.06<br>Directs him to move the Chief Court to pass an order calling upon the Company to return the gold or its value & to report the result to Government. |
| J-863. | 8 | From the Same. No 64 of 8.10.06.<br>States that the Criminal Revision petition No 134 of 05-06 (Govt Supdt & Manager of Tank Block Co., Kolar Gold Fields) heard before the Full Bench of the Chief Court has been dismissed & that a copy of the order will be submitted as soon as it is obtained.<br>Subd<br>May this lie over till the receipt of the Copy of the order from the Govt Advocate?<br>JV 12.10.06 SV 12/10/06<br>9 Gyr 12/10 |
| J 1082 | 9 | From the Same. No 80 of 2.11.06. forwards Copy of the Judgment in the above case, in cont[n] of his letter No 64 of 8.10.06. (8 above.).<br>10<br>Subd with an order recording or for other orders.<br>JV. SV 5/11/06. 5/11/06. The revision petition having been dismissed, the other alternative is to recover the gold by |

NOTE—Contn. sheet

G.R.S. 12]
General and Revenue Secretariat.

Cl5 File No. 114 of 1905

Serial No.

instituting a Civil Suit. Before doing so, we may perhaps give a notice thro' the Govt Advocate to the Directors of the Tank Block Company of our intention to file a suit.

SW
5/11/06

11

The Chief Court having declined to review ~~it~~ or revise, or add to, its former order, ~~the only~~ it is now necessary to decide whether a Civil suit should be instituted against the Tank Block mine for the value of the gold (about Rs 60/).

2. Incidentally it may be mentioned that the majority of the Judges of the Chief Court have held that ~~for~~ ~~the~~ sec. 369 of the Cr. Pr. Code has to be interpreted as if the words "other than the Chief Court" were omitted!

(2 secs) see 6.11.06

1 ~~The~~ ~~A~~ I think the presiding Judge Mr Nanjundayya has taken the sounder view. The decision of the majority has, however, to be accepted.

2 As regards the value of the gold, the matter may now be dropped. The draft reply ~~of~~ the ~~Govt~~ Govt may be approved

137
4-1-06

7/11/06

see 8/11

Note—Contn. sheet

GPB—50,000—23 10-05

G.R.S. 12]
General and Revenue Secretariat.

W File No. 114 of 1906

Serial No.

13

I agree in para 1 of the Secy's note -

2 As to para 2, the learned Magistrate should be called upon to show cause why the value of the property in question not to be should not be levied from him. as he erred in causing the property to be given away contrary to the provisions of sub-sec 3 of sec 517 of the Criml Pro Code - This provision of the law is known to daily & acted upon by the learned bytes of Magistrates & it is remarkable that the Special Magte at the Gold Fields should have disregarded it -

Mds 7 Dec 06

Clerk [illegible] 8/12/06

3208 8/12/06

14

The Dewan desires to know the name of the magistrate who passed the order in question. This information may be kindly furnished

C&B 7/2/07

Note submitted by Mr. Hodgson 9.2.07

C/s for weight 9/2

W 9/2/07

Note—Contn. sheet

GPB—50,000—23-10-05

G.R.S. 12]

General and Revenue Secretariat.

Judl Cb File No. 114 of 1906/7

Serial No.

15 It is ascertained that Mr P. J. Bowring was the magistrate who passed the order in question.

Submitted

Rus SN 13/2/07 14/2

To the Under Secy with the Dewan's

3802 19.2.07

16 14/2/07

Record with the observation that the magistrate should not have handed over the goods to the Company before the case had been finally disposed of

17 Draft Rec'd & done 4/3/07

B 1/3/07

18 4/3

Draft Submitted

Rus SN 6/3/07 7/3/07 19 June

4/3/07

8/3/07

10 To the Govt Advocate in 91/Secn

the Dt Magistrate & the Revn Dt

No 92791-2 dt 12.3.07

Records the above with the observation that the presiding Magistrate should not have

Note—Contn. sheet

GPB—50,000—23-10-05

File No: 114

6 2258

1

From

The District Magistrate
Kolar District.

To

The Secretary to the
Government of Mysore
General & Revenue
departments

Dated 1st March 1906.

Despatched —do—

Received

General No.

C No. 446

Enclosure No. One

---

Forwarding the reply of the Superintendent of Tank Block Mines regarding the refund of Rs 60/- being the value of gold confiscated to Government.

Office of the District Magistrate
Kolar District.

Dated 1st March 1906.

From,
K. P. Puttannachetty Esqr.
District magistrate
Kolar District.

To,
B. L. Venkatadaradiengar Esqr.
Secretary to the Government of
Mysore General and Revenue
Departments. —

Sir,

With reference to your letter
No. J 1613/No. 114-4 dated 7th December 1905
I have the honor to forward here-
with copy of letter No. S.B/29 dated 12th
February 1906 from Mr. P. Bosworth
Smith, Superintendent and manager
of Jauk Mine, Oorgaum. The
arguments of the Company's
Solicitors are apparently supported by the
provision made in Section 547
C. P. C. and by a decided case

of the Allahabad High. Court

Mutasaddi ~~Ut~~ Mani Ram 19 All

112 (1897).

I have the honor to be

Sir,

Your most obt servant

W. M. Kennedy

District Magistrate

Kolar District

S. R.
29

Mysore West Gold Co: Ld and
Mysore Wynad Gold Co: Ld,
Tank mine,
Coorgaum 12th February 1906.

From

C. Bosworth Smith, Esquire,
Superintendent and Manager
Tank mine, Coorgaum

To

R. B. Plumer Esquire,
1st class Magistrate,
Kolar Gold Fields

Sir,

With reference to your official docket No: 1415 dated December 20th enclosing the copy of letter No: of 1613 / C.S. 114-4 dated 7th December 1903 from the Secretary to the Government, to the Deputy Commissioner, and copy of a letter No: 78 dated October 3rd from Government Advocate in Mysore to the Secretary to Govt. of His Highness the Maharaja of Mysore, General and Revenue Departments and asking for the sum of Rs 60/- said to be the value of the gold delivered to Tank mine under criminal case No: 286 of 1904-05

and

and its various contradictory orders, I have the honor to inform you that I placed the matter and all correspondence before the Mining Board who were unanimously of opinion that the value of the gold should not be returned to Government and thereupon instructed the Secretary of the - - - - - - - - to obtain the opinion of the Board's solicitors on the subject.

The Board's Solicitors state that on the question as to whether the Government of Mysore can, as suggested by the Government Advocate, successfully maintain a suit against the Tank Block Company, they are of opinion that such a suit will not lie.

They point out that under Section 520 (not 420 as stated by the Government Advocate) it was open to the Chief Court in Revision base ho:

H. O. pp 1814/15

158 of 1904-05 in its order not only to direct that the gold returned to the Tank Block company should be confis-cated to the Government but also to order that in default the Tank Block company should pay the value thereof and to fix a definite sum to be paid, which the Court failed to do in its order. Such an order of payment in default of restitution could have been executed under Section 547 of the Cri-minal Procedure Code which directs that any money payable by virtue of any order made under the Criminal Procedure Code shall be recoverable as if it were a fine, that is, by distress or attachment. All that the Chief Court directs is that the property should be confiscated. There is no finding that the property is the pro-perty of Government (on the other hand the property has been found by the Magistrate to belong to the

Tank

Tank Block Mine) and the only mode by which effect can be given to the Chief Court's Order is under the Code and not by a Separate Suit. The Government Advocate is in error when he states that there is no provision in the Code of Criminal Procedure to adopt any coercive measures to get back the property; for we find that section 520 was recently amended by Act V of 1898 by adding the words "and make any further orders that may be just" and in the statement of objects and Reasons the amendment was expressly made to enable a Superior Court to give effect to an order setting aside the order of the court of first instance, if that order has been carried out by directing the restitution of property.

In

In their letter to the Board their Solicitors state "we think it highly desirable that the Board should draw the attention of the Government to the Procedure of the Mysore Chief Court in this matter and at the same time intimate to it that in the opinion of the Board's legal Advisers and under the circumstances no action can lie by Government to recover the gold or its value"

I have the honor &c

(Sd) P. Bosworth Smith,
Superintendent & Manager.

"Copy"

W. Mackenzie

District Magistrate
Kolar District.

9

G.E.S. 28]

File No. 114

Serial No. 7.

*Diary No. of letter replied to* ———

*Proceedings of the Government of His Highness the Maharaja of Mysore.*

GENERAL AND REVENUE SECRETARIAT.
(Contd.)

, *the* 190

Date of issue 28.3.06.

Signed by Dy Secretary

READ.—

Letter No. C 446 dated the 18th March 1906 from the District Magistrate of Kolar forwarding, with reference to this office letter No. J 1613/06-114 dated 7th Dec 05, copy of a letter from the Superintendent and manager of the Tank Block Mine, Oorgaum, stating that in the opinion of the Mining Boards' legal adviser no action by Govt can lie against the Company either for the recovery

over

ORDER THEREON. No.

Ad 21/3/06

12098 Mutd 23.11.06

Spare 26.3.1906

SUBJECT

of the gold concerned in the
Case No. 286 of 1905 on the file
of the Asst. Commissioner of
the K.G. Fields or its Value:

2. The unofficial opinion
of the Govt. Advocate in Mysore
stating that a matter and
stand there seems to be 2 courses
open for the recovery of the gold referred to
or its value viz either to move
the Chief Ct. to pass a further
order under Sec 520 Cr. Pro. Code
Calling upon the Bank Block Comps
to return the gold or its value or
to institute a suit.

Order Necessary — J 2625-26/Ct 114-7 dt 28.3.06.

~~Honourable Board~~

Under the circumstances
represented, the Govt. Advocate is
requested to move the Chief Ct.
to pass a further order under
Sec 520 of the Cr. Pro Code Calling upon
the Company to return the gold
in question or its Value & to report the result to Govt.

Seen SN 4/4/06

21.3.1906

Secretary

SN 4/4/06

To the Govt. Advocate in Mysore.
Asst. Commr. & Dist. Magte of Kolar.

No 64

Cs 114-05 Sdd

III
10-1081

From

The Government Advocate
in Mysore

To

The Secretary to the Government of
His Highness the Maharajah of
Mysore
General & Revenue Dept.

Office of the
Government Advocate in Mysore
Bangalore 8th October 1906

Sir.

With reference to the Proceedings of Government order No. J 2625-26, dated the 28th March 1906 I have the honor to report that the Criminal Revision Petition No. 134 of 1905/6 (Govt. Vs. Supdt. & Manager of Jutki Block & Co. Kolar Gold Fields) heard before the Full Bench of the Chief Court on the 17th Ultimo have been dismissed this day & a copy of the order will be submitted as soon as it is obtained

I have the honor to be
Sir
Your most obedient servant.
S. Narayana Rao
Government Advocate

Dwd 8/11/06

No 80

Encl 1

711 23/11/06

65/14-06/9

J 1082 Office of the
Government Advocate
in Mysore
Bangalore 2nd November
1906

From

The Government Advocate
in Mysore

To

The Secretary to the Government of
His Highness the Maharajah of
Mysore

Sir,

In continuation of this office letter No 64 of the 8th Ultimo I have the honor to submit herewith a copy of the order passed by the Judges of the Chief Court in Criminal Revision Petition No 134 of 1905/6. (Government Vs. Manager of Tank Superintendent & Block Co. Kolar Gold Fields.)

I have the honor to be
Sir,
Your most obedient Servant
A. Narayana Rao
Government Advocate

In the Chief Court of Mysore
at Bangalore

present-

Hon Justice L. Moore Chief Judge
and
Hon Justice H. V. Nanjundayya
and
Hon Justice P. S. Krishna Row,
Rao Bahadur.

Criminal Revision petition No: 134 of 35-6

The Government of Mysore - - Petitioner
(By Mr. S. Narayana Row)

Vs

Superintendent and Manager of the Tank Block Company, Kolar Gold Fields. (By Mr Adam.) } Counter petitioner.

Revision petition presented by

by the Government Advocate stating that the Sponge gold which was ordered to be confiscated in Revision Case No: 158 of 1904-05, was exported by the Assistant Commissioner and 1st class Magistrate Kolar Gold Fields to have been sent to England by the Counter petitioners and praying for a further order in the Case under Section 520 of the Code of Criminal procedure directing the Counter petitioners to return the gold delivered to him by the Magistrate, or its value Rs 60/- and in default to instruct the Magistrate to enforce this order under the provision of Section 547 of the Code of Criminal procedure

This Revision Petition Coming on for hearing before

a

a Full Bench on Monday the 17th day of September 1906, the Court pronounced the following

Order.

The Chief Judge:—

We are asked to review the order of a Bench of this Court, passed on 20th July 1905 in Criminal Revision Case 158 of 1904-05. I am most decidedly of opinion that neither a Bench of this Court, nor a Full Bench has the power to revise or review an order passed by the Court under the C. P. C. This is the view taken by the Allahabad (I. L. R VII All, 672) Bombay (I. L. R 10. Bom. 176) and Calcutta (I. L. R 14 Cal, 42) High Courts. Section 369 of the C. P. C, is as follows:—

"No Court other than a

(c)

a High Court, when it has signed its Judgment, shall alter or review the same, except as provided in Section 395 and 484, or to correct a clerical error."

The view taken by the High Courts in British India as to this Section is that the words other than a High Court, have been inserted in it, because of the provision of Section 434 C.P.C. under which in certain circumstances power to review is given and that the Section must be held as being to the effect that no Court other than a High Court acting under Section 434 shall &c. Section 434 of the C. P.C. is however not in force in Burma, and it is argued, that here at all events, the interpretation

of

of Section 369 just given, cannot apply, and that it should therefore be held that in all cases, this Chief Court can review its judgments and orders. I cannot accept this argument. It appears to me that if it be held that the words other than a High Court have been inserted in the section because of the provisions of section 434, it follows that where section 434 is not in force, a High Court has no power to review its orders in any case. The question for consideration to my mind, is not as to whether a High Courts' power to review its own orders has been taken away by Sec: 369 or any other section, but whether it has been conferred on the High Court by any provision of Law. I cannot find any

any such provision, and that a High Court has no such power is the view taken and uniformly acted on by all the High Courts in British India. I would formally overrule the decision of a Bench of this Court, reported at 6 Mysore Reports 117, and dismiss this C.R.P.

(Sd) L. Moore.
Chief Judge.

Mr Justice H. V. Nanjundayya.—

The Magistrate of Kolar Gold Fields passed an order in Criminal Case No: 286 of 1904-05, that a small quantity of gold produced in the case should be handed over to a mining Company called the Tank Block Mine

This

This Court in Revision of the said order directed that the Jauk Block Mine should be called upon to make good their claim within 2 months, in default of which, the gold would be confiscated to Government. Thereupon the Magistrate after some enquiry again ordered that it should be given over to the same Company. This matter again came up for revision and the last order of this Court passed in July 1905 (C.R. P. 158 of 1904-05) was that the gold should be confiscated to Government. The Magistrate has reported that before the order reached him, he had handed over the gold to the Mining Company named in the order previously passed

passed by him and set aside by this Court. The question before us now is, how the order passed by this Court should be carried out.

It was contended by the learned advocate who appeared for the Company that our previous order passed in February 1905 was one under section 518 that the Magistrates order following it was passed under section 428 as the claim was in his opinion proved, and that Consequently his order was final. I think, that this Contention is of no force This Court did not make a reference either to the District or to a Sub Divisional Magistrate as contemplated by section 518.

His order was one passed under section 423 setting aside the order of an inferior Court, and directing it to dispose of the matter after hearing the parties under Clauses (c) and (d). The subsequent order of the Magistrate passed under this direction was of the same nature as his original order, i.e., it was one passed under section 517 of the Code. Such an order is expressly made subject to appeal and revision under section 520, and the Magistrate was bound under sub-section 3 of Section 517 to wait until the period allowed for an appeal had passed, before delivering the property to the party concerned

It would be strange indeed if when a Magistrate has erroneously

erroneously delivered property that should be confiscated to Government, to a private party, if should be beyond the power of any Court to correct the error, or if the only way of enforcing an order passed by a Court in its judicial Capacity should be recourse to a suit. It is unnecessary to hold that this difficulty arises in this case. Under Section 520 this Court has power not only to modify, alter, or annul the Magistrate's order, but also to pass such further orders as may be just. If our power Came to an end with passing a simple order modifying or annulling or altering such order, there is

no

no meaning in the words that have been recently added. The object of the addition seems to have been exactly to meet cases like this, to prevent the solemn orders of a final Court being set at naught by mere quibbling or by mistakes committed by officials charged with the execution of judicial orders. The use of the plural term as any further orders is explicable only in this view.

It seems to be therefore unnecessary to consider the question whether we can review our orders in Criminal Cases. But if my view of the scope of section 520 is considered erroneous, I am of opinion, that we have such power under the

the Criminal procedure Code.

I am aware that three High Courts in British India have held a different opinion, but these Cases were Considered in the Case of Narasappa & Govindappa (6 Mys: Chief Court Reports 117) and it was decided that this Court had such power. On the principle of following our own precedents, if on no other ground, I think we should follow the Ruling of this Court, unless there are very strong Reasons to the contrary. So far however, from this being the Case, there are strong Reasons in support of the view adopted by this Court.

In one of the Cases (L.C.V. Fox. 10.B.176) it is suggested that

4 that the only remedy to correct a manifest error is to apply to the Crown for a remission of the sentence. But the Case decided in this Court, was itself an instance of one in which Government could not possibly interfere to correct the injustice. In British India there is an appeal in extreme Cases open to H. M. Privy Council. Whereas here, there would be no way of correcting an error, however manifest, of this Court, unless we could review our decisions.

The main argument employed in the three British Indian Cases is that the words "other than a High Court" in section 369 were meant to allow-

allow the exercise of such power only as was required for section 434. The latter is a provision that applies only to the Chartered High Courts, and has been omitted in our Code. As the words of section 369 are retained without alteration, it follows that they have some thus meaning. For I think that we cannot fairly make the proposition assumption that these words are meaningless and were retained by careless oversight. Even in the British Indian Code, the purpose of excepting the exercise of the power given by section 434 could have been more easily

achieved by excepting this section also expressly, and omitting mention of the High Court altogether.

In the Case reported in XIV Cal. p. 42, it is stated that the words other than a High Court add no other meaning than if the words "this provision does not apply to the High Court" had been inserted, and Cannot give a power which the High Court does not already possess

The Case of this Court affirming the existence of such a power was decided in October 1901, and the present Criminal Procedure Regulation was passed in February 1904

If

If the Legislature intended to take away the power claimed for this Court, they would have omitted the words "other than a Chief Court" altogether in section 369. The retention of these words clearly proves that the power has been reserved.

In fact, the very existence of this provision seems to show that the Legislature considered that in the absence of limitation, Courts would have a general power of correcting errors by reviews, otherwise there was no reason to restrict such power by a general prohibition. Such prohibition would be

5 lee quite proper in the case of subordinate Courts, whose decision can always lee corrected by the Chief Court, but it would lee quite undesirable where applied to a Court of final jurisdiction.

Even if a Review lee held to lee inadmissible I am of opinion that no Court can Revise our order under the provisions of Section 439 As pointed out in the course of argument in the Bombay Case (10 B. 176) Section 439 is not restricted to the proceedings of subordinate Courts like the corresponding Section of the previous Code,

and

and I think we have the power to correct the errors in our own proceedings under this provision.

I would therefore now pass an order supplementary to that of July 1905, and direct that if the gold delivered to the Company cannot be recovered in Specie its value (Rs 60/- as estimated) should be recovered.

21-9-06. Judge.

Hon'ble Justice P. S. Krishna Rao:—

The first question referred to the Full Bench for consideration is, whether having regard to the Rulings of the

the High Courts in British India
in ~~the~~ marginally noted cases, one
order under the Criminal proce-
dure Code passed by a single
judge or by a Divisional Bench
of this Court - Can be reviewed
or revised by the Judge or the
Judges by whom it was passed,
or by the Full Bench. In the
Case of Narnappa ~~&~~ Gowdappa
(6. Mysore Chief Court Reports 117)
a Division Bench of this
Court refused to follow the
above decisions of the British
Courts and held that this Court
had power under Section 369
Criminal procedure Code,
to review its own decision
or order. In 1904, the Mysore
Criminal procedure Regulation
was passed, and in the Statement
of

I.L.R. 7 all. 672.
I.L.R. 10 Bom. 176.
I.L.R. 14. Cal. 42.

Objects and Reasons appended to the draft Regulation, there is nothing to indicate, that the framers of the draft Regulation took into Consideration the conflicting views held by this Court and by the High Courts in British India and that they agreed with the Construction put upon the Section by this Court. On the other hand, it seems extremely likely that their attention was not drawn to the fact that there was this difference of opinion, and that they merely followed the wording of Section 369 of the British Code (Act V of 1898). The

The presumption, therefore, is that they intended that the section should be construed in the same manner as the Indian Legislature intended it should be construed. As to what the intention of the Indian Legislature was, there seems to be little doubt - prior to the passing of Act V of 1898, all the Chartered High Courts in British India had uniformly held that upon a prior construction of Section 369 of Act X of 1882 (the Code of Criminal procedure in force before Act V of 1898 was passed) no High Court could review its own decision or order. With these decisions before them the

the

the Indian Legislature did not think it fit to alter the wording of the sections in the new Code, so as to confer upon the High Courts, the power of reviewing their own decisions and orders, and the inference is that they intended to affirm the view taken by the High Courts, and that they did not consider any allegation in the Law to be necessary. The language of the Section in the Purpose Regulation being the same, there seems to be no reason, why this Court should adopt a different Construction.

The fact that Section 434 of the British Code has not

not been made applicable to
Burmese, does not in any kind
afford any argument against
the correctness of the view
taken by the High Courts in
British India, for the real
question to be considered is
not whether a High Court's power
of Review has been taken away,
but, whether it has been Conferred
by Section 369 or by any other
provision of law. A Court
has no inherent power to review
and set aside its own decision
or Order. Such a power exists
only by Statute. By Section 434
a power to Review in certain
circumstances was Conferred
upon High Courts in British
India, and the omission of
that

that section in the Supreme Regulation, merely shows that even this limited power was not intended to be conferred on this Court. There being no express power conferred either by section 369 or by any other provision of law. I agree with the learned Chief Judge in thinking that this Court has not the power of reviewing its own decision or order under the Criminal procedure Code. I also agree in thinking that this Court has not under section 439, Criminal procedure Code, the power of reviewing its own decision or order.

There can be no doubt that

that the denial to the High Court of the power of reviewing or revising its own decision or order, may lead in some cases to failure of justice, and that cases are conceivable in which the interference of Government in the Exercise of its prerogative may be absolutely impossible But these are matters to be taken into Consideration by the Legislature when amending the law, if in their opinion an amendment is considered desirable or necessary and ought not to influence Courts of justice in putting a construction upon the law which was not intended by the framers of the law-

The

The second question for determination is whether, under section 520, Criminal Procedure Code, it is not competent to this Court to pass an order directing the Tank Block Mine either to release the Gold, which under the orders of this Court passed in July 1905 should never been confiscated to Government, but which, before the said order was received by the Magistrate, was delivered by him to the Company, or to pay its value. The words "and make any further orders that may be just", were doubtless intended to

to give power to a superior
Court — to give effect to its order
setting aside the order of an
inferior Court, by directing the
restitution of the property in
respect of which an offence
was found to have been
committed, if the latter order
has been carried out. But in
the present case it has become
impossible for the Fanik block
Firm to return the gold in specie
and the question is whether
it is competent to this Court
as a Court of Criminal juris-
diction to direct by way of
restitution the market value
of the property being paid
to Government. The word property
is defined in section 517 of the
Code

Code, as including not only such property as has been originally in the possession or under the control of any party, but also any property into, or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange. It is very doubtful whether the market value of the property can be brought within this definition. The question of the market value of the property was not one which it was necessary for the criminal Court to decide for the purpose of the trial of the accused for an offence under section

411 App

411 I.P.C, nor could any decision arrived at incidentally by the Magistrate be binding upon persons who were not parties to the Criminal proceedings and who professed their claim to the property under Section 517 Criminal Procedure Code, after the termination of the trial against the accused. It appears to me that an authoritative decision on the question could only be pronounced by a Civil Court and that a Criminal Court could not except with the consent of the contending parties, grant any

any relief in respect of the value of the property by summary process under the provisions of Chapter XLIII of the Code of Criminal Procedure.

On this ground I would hold that this application is unsustainable and that it must be dismissed.

(Sd) P. S. Krishna Row.
Judge.

Monday the 8th day of October 1906.

Ordered accordingly

(Sd) L. Moore
Chief Judge.

(Sd) P. S. Krishna Row.
Judge.

Compd.

G.R.S. 28]

44

File No. 14-06

Serial No. 10.

Diary No. of letter replied to 1082

*Proceedings of the Government of His Highness the Maharaja of Mysore.*

GENERAL AND REVENUE SECRETARIAT.

( )

5 (race)

, the 190

Date of issue 12.3.07

Signed by

READ.—

Letter no 78 dated the 3rd October 1905 from the Government Advocate in Mysore stating that the Chief Court has in Revision case no 158 of 04/05 ordered that the gold in the above case which was handed over to the Bank

ORDER THEREON.—No.

Block Company of the Kolar Gold Fields should be confiscated to Government and suggesting that ~~requesting that~~ as the Company ~~was~~ ~~has~~ ~~sent~~ the gold to England ~~and~~ as there is no provision

over

SUBJECT

MGCPB—20,000—24-2-05

Confirmed 6/3.

in the Criminal Procedure Code to adopt coercive measures to recover property ~~delivered~~ handed over to the Company, they may be called upon to deliver the gold to Government or to pay the value thereof.

2. The Office Letter no 1613 / Cts 114-05-4, S (4b) dated the 7th December 1905, to the Deputy Commissioner of the Kolar District, requesting him to inform the Company's local authorities of the opinion of the Government Advocate and to claim from them the value of the gold ~~stated~~ to be ~~Rs~~ 60.

3 Letter no 446, dated the 1st March 1906 from the District Magistrate of the Kolar District forwarding the reply of the Superintendent of the Champion Reef Mine stating that in the opinion of the S (5)

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(Continuation Sheet draft form.)

Company' legal advisers
no action by Government
to recover the Gold or its
Value can lie against the
Company
~~the Bank Block Company~~

4. G.O. no J 2625-26 of
the 28/3/06 directing ch 114-05-7
the Govt
Advocate to move the High
Court to pass a further
order under Sec 520 of the
Criminal Procedure Code
calling upon the Company
to return the Gold in question
or its Value and to report
the result to Government.

5. Letter no 64, of the 8th
October 1906, from the
Government Advocate in
Mysore, reporting that
the Criminal Revision Petition
no 134 of 1905/06 ~~of~~ for the recovery
of the Gold ~~or of the Value~~
~~thereof~~ from the Company
was heard ~~by the Court~~
~~Court~~ on the 17th Sept 06
and ~~the Case~~ dismissed,

Order thereon. no.
Recorded with the
observation that the
presiding Magistrate

the application made
by the Chief Court
in

in question or
its value

J 2791-2
CS 114 of 06-10 of 12.3.07

should not have handed
over the Gold to the Company
before the Case had been
finally disposed of.

W
8/8/07

for Secretary

To the Government Advocate Colombo
The District Magistrate
& the Police

Mrs SW
7/30/07 8/3/07